

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Constance and David Brown

Date Application filed with the Town Clerk: January 21, 2005

Nature of request: Petitioners seek a Special Permit, under Section 3.321 of the Zoning Bylaw, to convert a structure containing one dwelling unit and two businesses to a structure containing two dwelling units and no businesses.

Location of property: 320 North Pleasant Street, (Map 11C, Parcel 166, R-G Zone)

Legal notice: Published in the Daily Hampshire Gazette on January 26 and February 2, 2005, and sent to abutters on January 25, 2005.

Board members: Zina Tillona, Tom Simpson and Joan Golowich

Submissions:

Prior to the public hearing on February 10, 2005, the applicant submitted the following documents:

- A handwritten Management Plan discussing the history of the site and building, parking, snow removal, lighting, refuse and recycling, maintenance and repairs, lawn, trees and shrubs, lease, and storage;
- A site plan entitled "Robert Brown Property", dated July 31, 1985;
- A preliminary set of architectural plans dated January 2005, Sheets A1 and A2.

Prior to the public hearing on February 10, 2005, other documents were submitted as follows:

- The Planning Department submitted Memorandum 2005-07, dated February 3, 2005, discussing zoning, dimensional requirements, parking, plantings, lighting, historical issues, Conservation Commission review, phased growth, architectural plans and Fire Department review.
- The Planning Department submitted an Addendum to Memorandum 2005-07, dated February 7, 2005, which reported on a meeting between the Building Commissioner, Bonnie Weeks, and the Planning Department staff, in which the Management Plan and the Architectural and Site Plans referred to above were discussed.

- Jonathan Tucker, Interim Planning Director and staff liaison to the Historical Commission, submitted a document entitled "Form B – Building", representing a survey performed according to Massachusetts Historical Commission guidelines, describing the building at 320 North Pleasant Street, along with a perspective drawing entitled "1886 Burleigh Perspective" which showed the house under consideration.
- The Fire Department submitted a Memorandum, dated January 27, 2005, discussing access for emergency vehicles, water supply and hydrants, the need for a fire alarm system, and clarification of the address.

At the public hearing on February 10, 2005, Jeffrey Scott Penn, architect, submitted more detailed architectural plans, dated February 10, 2005, entitled

- "Basement and First Floor Plans", Sheet A2;
- "Second Floor and Mezzanine Plans", Sheet A3;

which addressed many of the issues brought up in the Planning Department Memorandum and Addendum referred to above.

Prior to the continuation of the public hearing on March 24, 2005, the following documents were submitted:

- Jeffrey Scott Penn, architect, submitted a document entitled "Update after Meeting with Officials", dated March 11, 2005, which reported on issues discussed at the March 7, 2005, meeting with Jonathan Tucker, Interim Planning Director, Christine Brestrup, Land Use Planner, Bonnie Weeks, Building Commissioner, and Stephanie Ciccarello, Wetlands Administrator.
- The Amherst Historical Commission submitted minutes of its March 4, 2005, meeting in which David Brown presented his plans for the house in question and the Commission voted to support the plans as presented.
- The Planning Department submitted Memorandum ZBA FY2005-00016, dated March 15, 2005, which contained minutes of the public hearing of February 10, 2005, and a report on Conservation Commission review, Historical Commission review and a report on the meeting of March 7, 2005, between Mr. Penn and Bonnie Weeks, Building Commissioner, and Planning Department staff.
- Jeffrey Scott Penn submitted revised Architectural and Site Plans, Sheets A1, A2 and A3, dated March 15, 2005, which addressed issues brought up at the February 10, 2005, public hearing.
- The Conservation Commission submitted a document entitled "WPA Form 2 – Determination of Applicability" (RFD 05-0939) setting forth conditions under which the driveway, drain and walkway work is to be performed.
- David Brown submitted a revised, typed Management Plan addressing issues related to history and design of the house, description of the lot, parking, snow and ice, exterior lighting, refuse and recycling, maintenance and repairs, lawn, trees and shrubs, lease and storage.

After the continued public hearing on March 24, 2005, the following documents were submitted:

- A revised Site Plan, dated March 25, 2005, showing the relocated garbage shed, a proposed barrier on the west side of the driveway and parking area, and more information about exterior lighting;
- A standard Lease Agreement which Mr. Brown proposes to use for the building, including an Addendum;
- A revised Addendum to the standard Lease Agreement, received by the Planning Department on April 4, 2005, addressing parking, lighting, inspection, large furnishings, outdoor activities and storage.
- A revised Management Plan, dated March 29, 2005, addressing issues of ownership, management, number of bedrooms, storage of large items, lawn and landscape care, snow and ice removal, trash and recycling, party control and tenant management, parking, maintenance and repair of the building, exterior lighting and lease.

Site Visit: February 8, 2005

Board members Zina Tillona, Tom Simpson and Joan Golowich attended the site visit. They were met by the applicant David Brown, the architect Jeff Penn and the contractor Craig Dunlap, of Kurtz, Inc. At the site visit the Board observed the following:

- The location of the property in a neighborhood of older homes and multi-family residences, across the street from Kendrick Park and within walking distance of downtown Amherst and the University of Massachusetts;
- The existing, historical, wood frame house, which had been damaged by fire in June 2004;
- The parking area which appears to be able to accommodate more than the 4 parking spaces required for a two-family house;
- The driveway and parking area pavement which are in need of repair;
- The site, which has few existing plantings, with the exception of a row of evergreen trees along the northern property line and a low-lying, wooded area at the rear of the site on the west side;
- The interior of the basement, first floor, second floor and third floor;
- The stairways connecting the floors and the locations of the existing and proposed means of egress from both apartments;
- The neighboring properties to the south which are connected to Mr. Brown's property by a rear driveway;
- The wet areas on the adjacent property on the north side.

Public Hearing: February 10, 2005.

The public hearing was held in the Town Room, Town Hall. The applicant, David Brown, and the architect, Jeffrey Penn, presented the petition. They made the following statements:

- The applicant is proposing to change the use of the building from a mixed use (including offices and one residential unit) to a single use, consisting of two dwelling units.
- All of the changes will be to the interior, with the following exceptions:
 - Windows will be shorter in the kitchen area of the first floor unit, at the southwest corner of the house, and will be similar in character to some of the previous window replacements.
 - One door will be added on the basement level, at the west side of the building.
 - A new roof will be installed.
 - Two skylights will be added to the roof on the south side, one on either side of the chimney.
- The first floor apartment will have 3 bedrooms, two on the first floor and one in the basement.
- The second floor apartment will have 4 bedrooms, two on the second floor and two on the third floor (mezzanine) level.
- The stairway from the first floor to the basement bedroom will be reconstructed.
- Each of the units will have two means of egress.
- There will be a new hallway and door on the basement level, allowing the building owner to have access to the large utility and storage area in the basement without having to enter through the tenants' basement bedroom; the large utility and storage area in the basement will be accessible to the property manager only, but tenants will have storage privileges there and will have access by making an appointment with the property manager.
- There will be a laundry area in the basement for the first floor apartment.
- The kitchen on the first floor will be at the southwest corner of the building.
- The first floor apartment will also have a living room and dining room and one bathroom on the first floor, in addition to two bedrooms.
- The front foyer will serve as a common entry area for the two apartments and will be fire-rated, with a staircase going up to the second floor.
- The fire exit from the rear of the second floor apartment will go directly to the outside, via the stairway to the back porch.
- All exterior lighting is proposed to be downcast.
- There will not be significant new construction on the second floor.
- The second floor bathroom will be redone and there will be minor changes to the kitchen.
- At the mezzanine level of the second floor unit all interior walls will be new.
- The existing windows are vinyl "replacement" windows.
- Windows will provide emergency egress from the mezzanine level in addition to the egress provided by the rear staircase, which connects to the egress stair from the second floor and leads out to the back porch.

- The mezzanine level will contain two bedrooms and a loft area.

There was discussion between Bonnie Weeks, Building Commissioner, and Mr. Penn, the architect, about how to complete the fire rating in the common foyer.

Mr. Simpson asked about the total number of bedrooms. Mr. Brown responded that the second floor apartment has always had four bedrooms. Three bedrooms will be added when the first floor unit is completed. There will then be a total of seven bedrooms in the house.

The Board noted the following:

- There will be two steps between the two levels on the third floor (mezzanine).
- Hemlock trees will be removed along the north property line.

Mr. Brown reported that the neighbor to the north, Richard Howland, is in favor of removing the hemlocks. Mr. Brown stated that he is not planning to remove the tree stumps, implying that there would be no excavation involved with the tree removal, thus lessening potential wetland impacts.

The Board advised Mr. Brown to contact the Conservation Commission regarding the removal of the hemlocks and the repaving of the driveway to determine if there are any wetland resource issues that need to be addressed.

The Board inquired about plans for the parking area and driveway.

Mr. Penn responded that the repaving of the parking and driveway areas would not occur immediately but would happen in a year or two.

The Board noted that it needs written confirmation that the plans for repaving and regrading of the parking and driveway areas as well as tree removal have been approved by the Conservation Commission.

The Board and Mr. Brown discussed the issue of the driveway which circles around the house and serves this property as well as the properties to the south. Ms. Tillona suggested that Mr. Brown might wish to negotiate an easement with the owners of the adjacent properties for their continued use of the driveway, in order to avoid future problems.

Mr. Penn suggested that Mr. Brown could "post" the driveway and parking areas "For use by residents and guests of 320 North Pleasant Street, only", to begin the process of closing the driveway to use by others.

The Board recommended that Mr. Brown do one of the following:

- Sever the driveway access to the adjacent properties soon, or
- Establish a formal easement.

The Board requested that Mr. Brown submit a revised Site Plan showing:

- Locations of proposed parking spaces, including lines marking the spaces;
- Proposed plantings, especially along the top of the slope at the southwest corner of the house next to the parking area, in order to screen the parking from the road;
- A clearly-labeled storage location for refuse and recycling containers, and the location of a shed, if these items are to be stored in a shed; (The Building Commissioner noted that the Board of Health prefers that trash and recycling be stored outside of dwelling units.)
- A dimensional table on the plan showing lot coverage building coverage and setbacks from the property lines.

The Board also requested that Mr. Brown submit a revised Management Plan clearly stating who is responsible for what, and including statements to the effect that:

- Mr. Brown's mother, Constance Brown, owns the property.
- Mr. Brown will act as the Manager of the property for his mother.
- The Manager will be responsible for:
 - Landscape and lawn maintenance;
 - Maintenance of the building;
 - Snow removal;
 - Removal of trash and recycling.
- The name and phone number of the Manager will be placed on file in the Police Department and the Building Commissioner's office.

There were no comments from the public.

The Board requested that Mr. Brown submit a sample lease, clearly stating the responsibilities of the landlord and tenant with respect to the property maintenance and management.

Mr. Brown stated that he is hoping to rent the two units to families.

Ms. Golowich noted that there are other apartments located along the street.

The Board summarized the items that they would like to receive from Mr. Brown before making a decision on the application:

- A revised Site Plan;
- Revised Architectural Plans;
- A revised Management Plan;

- A sample lease;
- Evidence that Mr. Brown has discussed his proposal with the Conservation Commission;
- Comments from the Historical Commission on the proposed changes to the building.

Mr. Simpson moved to continue the public hearing to Thursday, March 24th, at 7:00 p.m. Ms. Golowich seconded the motion. The Board voted unanimously to continue the public hearing to Thursday, March 24th at 7:00 p.m.

Continued Public Hearing: March 24, 2005

The continued public hearing was held in the Town Room, Town Hall. The applicant, David Brown, and the architect, Jeff Penn, again presented the application.

The Board asked Mr. Penn to describe the changes that had been made to the plans since the February 10, 2005, hearing. Mr. Penn responded that, since that date, he had met with Jonathan Tucker, Interim Planning Director, Christine Brestrup, Land Use Planner, and Bonnie Weeks, Building Commissioner, to review necessary changes, and had incorporated the following changes:

- The new plans include a historic replacement window in the front of the building, at the gable end, to match the "12 over 2" paned window that had been there originally.
- The trash and recycling shed has been located on the pavement in the parking area, eliminating one parking space.
- Plantings have been added at the rear of the yard where the slope drops down to the parking area.
- The approach to fire-rating has been refined after discussions with the Building Commissioner.

The Board inquired about the basement storage area. David Brown responded that this area is used to house utilities such as the furnace, the boiler, hot water tanks and other items related to utilities.

The Board inquired about the parking area and what provisions were being made to keep cars from parking on the grass. Discussion ensued and the Board requested that the applicant revise the Site Plan to show a barrier of plants, boulders or a fence at the west side of the parking lot in order to prevent cars from driving and parking on the grass.

The Board and Mr. Brown discussed the possibility of cutting off the driveway connection with properties to the south. Mr. Brown stated that he was not prepared to cut off the driveway at this time because of potential future uses of the rest of his property and the adjacent property to the south.

The Board inquired about snow plowing and where the snow is deposited. Mr. Brown described his pattern of plowing and stated that he pushes the plowed snow off to the west side of the parking lot.

The Board inquired about plantings. Mr. Brown stated that, other than shrubs to be planted to screen the parking area, he intends to plant and maintain grass on the property.

The Board inquired about the removal of evergreen trees along the north property line. Mr. Penn responded that he had not included the removal of these trees on the plan submitted to the Conservation Commission and therefore the removal had not been approved as part of the Request for Determination, for which there had been a public hearing the previous evening (March 23, 2005). The installation of the drain line, the building of the walkway and the repaving of the driveway as shown on the Site Plan has been approved by the Conservation Commission, with conditions. The Conservation Commission would need to review the removal of the trees at a future hearing, under a new Request for Determination.

The Board inquired about the need for lighting along the walk on the south side of the building. There was discussion about the need for such lighting. The Board requested that the applicant submit a revised Site Plan showing more lighting around the house and particularly on the south side of the house, perhaps in the form of post-mounted lights along the walkway.

Tom Simpson MOVED to close the evidentiary portion of the public hearing. Joan Golowich SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting

At the public meeting the Board discussed possible conditions including:

- The addition of at least 2 more lights along the south sidewalk and a light at each door;
- The addition of a barrier, possibly plants or a fence, at the west edge of the driveway/parking area to keep cars off the lawn;
- Moving the trash storage shed farther to the west so that drivers would not be tempted to park in front of it;
- The submission of a revised Management Plan.

Findings:

Under Zoning Bylaw Section 10.38 the Board found that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because the property is located near the downtown area and near the university and is in a neighborhood with

several other multi-family houses.

- 10.382 – The proposal would not constitute a nuisance because there will be no noise, odor, dust, vibration, lights or other visually offensive structures or site features generated by the proposed uses, since the standard Lease and its Addendum place limits on parties and the Management Plan and Site Plan and conditions of the Special Permit require that lights be downcast.
- 10.383 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians because there is adequate parking on site to accommodate the needs of tenants and visitors and the driveway will be regraded and repaved to allow it to function more safely and there is ample turnaround space on site so that cars do not need to back out of the driveway.
- 10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because a similar use has previously been accommodated in this building in the form of one apartment, and the building and site will be appropriately upgraded and renovated to accommodate an added dwelling unit.
- 10.385 – The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site because the Management Plan and standard Lease and its Addendum place limits on parties and the Management Plan and Site Plan and conditions of the Special Permit require that lights be downcast. The conditions of the Special Permit require that the property be operated in accordance with the Management Plan and built according to plans approved by the Board.
- 10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the town because there is adequate parking on site to meet the requirements of Section 7.000 of the Zoning Bylaw and no more than 6 cars will be allowed to park on the site on a regular basis, according to the Lease and the Management Plan. There are no signs being proposed as part of this application.
- 10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because the site is connected to a town sanitary sewer, refuse and recyclables will be stored in bins in a shed to be located behind the house in the parking area and the owner will hire a trucking company to remove trash and recycling on a weekly basis.
- 10.391 – The proposal protects, to the extent feasible, unique or important natural, historic or scenic features because the architectural plans have been reviewed and supported by the Historical Commission and the site plans for installation of a drain line, a new walkway and the repaving of the parking area and driveway have been reviewed and approved by the Conservation Commission.

- 10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because the parking area is not immediately adjacent to residences thus minimizing the intrusion of light from headlights and all exterior lighting will be downcast and will not shine onto adjacent streets or properties.
- 10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because only minor changes are being proposed to the exterior of the building and these changes have been supported by the Historical Commission.
- 10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Zoning Board Decision

Tom Simpson MOVED to approve the application, with conditions. Joan Golowich SECONDED the motion.

For all the reasons stated above, the Board VOTED unanimously to GRANT a Special Permit, with conditions, to Constance and David Brown, to convert a structure containing one dwelling unit and two businesses to a structure containing two dwelling units and no businesses, under Section 3.321 of the Zoning Bylaw, at 320 North Pleasant Street, (Map 11C, Parcel 166, R-G Zone).

Continued Public Meeting

April 6, 2005

At the continued public meeting on April 6, 2005, the Board reviewed and approved the following documents:

- Revised "Site Plan and Fire Protection Plan", Sheet A1, dated March 25, 2005
- Revised "Management Plan for 320 North Pleasant Street", dated March 29, 2005
- Sample Lease Agreement and Addendum to Lease Agreement, received in the Planning Department on April 1 and April 4, 2005, respectively.

ZINA TILLONA

TOM SIMPSON

JOAN GOLOWICH

FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2005.
NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals, based on the following documents entitled:

- “Site Plan and Fire Protection Plan“, Sheet A1, approved on April 6, 2005;
- “Basement and First Floor Plans“, Sheet A2, approved on March 24, 2005;
- “Second Floor and Mezzanine Plans“, Sheet A3, approved on March 24, 2005;
- Management Plan for 320 North Pleasant Street, dated March 29, 2005, approved April 6, 2005;
- Sample Lease Agreement and Addendum to Lease Agreement, approved April 6, 2005

hereby GRANTS a Special Permit to Constance and David Brown, to convert a structure containing one dwelling unit and two businesses to a structure containing two dwelling units and no businesses, under Section 3.321 of the Zoning Bylaw, at 320 North Pleasant Street, (Map 11C, Parcel 166, R-G Zone), with the following conditions:

1. The property shall be managed in accordance with the revised Management Plan approved by the Board on April 6, 2005. **Any changes to the Management Plan as approved by the Board on April 6, 2005, will require a modification to the Special Permit.**
2. The site improvement work shall be constructed in accordance with the Special Conditions listed in the Determination of Applicability (RFD05-0939) issued by the Conservation Commission.
3. The site improvements shall be constructed according to the revised Site Plan, Sheet A1, approved by the Board on April 6, 2005, and the landscape plantings shall be installed and continuously maintained.
4. The building renovations shall be built according to the architectural plans approved on March 24, 2005, as follows:
 - “Basement and First Floor Plans“, Sheet A2;
 - “Second Floor and Mezzanine Plans“, Sheet A3.
5. The applicant, Mr. Brown, or his successor in management, shall submit his name and phone number to the Building Commissioner, the Police Department and the tenants of 320 North Pleasant Street. Any changes in the identity of the

manager or his phone number shall subsequently be submitted to the parties noted above.

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6. The applicant shall lease the apartments in accordance with the standard Lease Agreement approved by the Board on April 6, 2005.
7. Exterior lighting shall be downcast and shall not shine onto adjacent properties or streets.
8. This Special Permit is subject to Section 14 of the Zoning By-law, Phased Growth. Development authorization is available as of April 2005.

ZINA TILLONA, Chair
Amherst Zoning Board of Appeals

DATE